REMARKS

Applicant respectfully requests reconsideration. Claims 1-18 were previously cancelled. Claims 19-37 were previously pending in this application. Claims 30, 36, and 37 are amended herein. Support for amended claim 30 is found at least on page 4, last paragraph and in Example 3, on pages 10-13. Support for amended claim 36 is found at least on page 5, last paragraph; page 3, paragraphs 3-4; and Examples 4-5, on pages 13-16. Support for amended claim 37 is found at least on page 3, paragraph 5 and Example 9, on page 18. No claims are cancelled. No new claims are added. As a result, claims 19-37 are pending for examination with claims 19, 29, 30, 36, and 37 being independent claims. No new matter has been added.

RESPONSE TO THE RESTRICTION REQUIREMENT

The Examiner required election between inventions of Group I (claims 19-29, 36), Group II (claims 30-35), and Group III (claim 37). If Applicant elects Group I, the Examiner required further election of a specific SEQ ID NO. Applicant hereby elects the invention of Group I, claims 19-29 and 36. Having elected Group I, Applicant further elects SEQ ID NO: 46. Applicant expressly reserves the right to file one or more divisional or continuation applications on the subject matter of the non-elected claims. Applicant respectfully traverses this restriction requirement for the reasons detailed below.

The Examiner asserts that the application contains inventions listed as Groups I-III that do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2 they lack the same or corresponding special technical features. The Examiner asserts that the special technical feature of Group I is the structure and function of a synthetic antimicrobial peptide; of Group II is the method of using recombinant DNA to produce a peptide; and of Group III is the manufacture of an antitumor drug. The Examiner asserts that Group I is subject to further restriction to a specific SEQ ID NO.

Applicant disagrees with the Examiner's characterization of the special technical feature. Special technical features are "those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." (See 37 CFR 1.475(a).) In the instant application, the special technical feature is the synthetic antimicrobial peptide. Applicant

acknowledges that the application contains claims to different categories of invention. However, "a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to . . . [a] product, a process specially adapted for the manufacture of said product, and a use of said product". (See 37 C.F.R. 1.475(b).) The instant claims relate to a product (the synthetic antimicrobial peptide of any one of claims 19-28), a process specially adapted for the manufacture of said product (the synthetic antimicrobial peptide production method of any one of claims 29 – 35), and a use of said product (the synthetic antimicrobial peptide treatment method of any one of claims 36 and 37). Thus, unity of invention is present.

The Examiner improperly relies upon 37 C.F.R. 1.141 to support the restriction requirement of Group I that limits the antimicrobial peptide to a specific SEQ ID NO. However, the instant application is a national stage application submitted under 35 U.S.C. §371 and, therefore, the unity of invention standard is applicable and "not restriction practice pursuant to 37 CFR 1.141-1.146". (MPEP 1893.03(d).) Under the unity of invention standard,

> wherein a single claim defines alternatives (chemical or non-chemical) . . . the requirement of a technical interrelationship and the same or corresponding special technical features as defined in PCT Rule 13.2, shall be considered to be met when the alternatives are of a similar nature. . . . [F]or alternatives of chemical compounds, they shall be regarded as being of a similar nature where the following criteria are fulfilled: (A) All alternatives have a common property or activity; and (B) (1) A common structure is present, i.e., a significant structural element is shared by all of the alternatives; or . . . . (MPEP 1850(III)(B))

The claimed synthetic antimicrobial peptides possess a common property or activity (See, for example, page 6, paragraphs 3-5) and a significant structural element (e.g., (A1-A2-A3-A4) (A1'-A2'-A3'-A4')). (See, for example, page 1, paragraph 4 – page 4, paragraph 2). Thus, unity of invention is present.

Even if the Examiner maintains the restriction requirement to elect a specific SEQ ID NO within Group I, the remaining SEQ ID NOs should be rejoined upon a determination that the elected object matter is patentable.

> If an examiner (1) determines that the claims lack unity of invention and (2) requires election of a single invention, when all of the claims drawn to the elected invention are allowable (i.e., meet the requirements of 35 U.S.C. 101, 102, 103 and 112), the nonelected invention(s) should be considered for rejoinder. Any nonelected product claim that requires

all the limitations of an allowable product claim, and any non-elected process claim that requires all the limitations of an allowable process claim, should be rejoined. (MPEP 821.04 and 821.04(a))

Because the Examiner has determined the claims lack unity of invention and has "require[d] election of a single invention" ("Applicants are required to further elect a specific SEQ ID NO."), the remaining SEQ ID NOs should be rejoined and examined once the Examiner determines the elected subject matter is allowable.

In view of the foregoing, reconsideration and withdrawal of the restriction requirement is respectfully requested.

CONCLUSION

If this communication is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, the Director is hereby authorized to charge any deficiency or credit any overpayment in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 23/2825, under Docket No. H0757.70000US00.

Dated: August 4, 2008

Respectfully submitted,

By 

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